

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIC V. HOLMES,

1:05-cv-00588-AWI-NEW (DLB) PC

Plaintiff,

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS** (Doc. 20)

vs.

S. SHERMAN, WARDEN, et al.,

**ORDER DISMISSING ACTION WITH  
PREJUDICE AS TO SECTION 1983  
CLAIMS FOR FAILURE TO STATE A  
CLAIM, AND WITHOUT PREJUDICE  
AS TO STATE LAW CLAIMS,** (Doc.  
17)

Defendants.

**ORDER THAT THIS DISMISSAL  
COUNTS AS A STRIKE PURSUANT TO  
28 U.S.C. § 1915(G)**

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Plaintiff Eric V. Holmes ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On August 17, 2006, the Magistrate Judge filed a Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objection to the

1 Findings and Recommendations was to be filed within thirty days.  
2 After obtaining multiple extensions of time, plaintiff filed an  
3 Objection to the Magistrate Judge's Findings and Recommendations  
4 on April 30, 2007.

5 In accordance with the provisions of 28 U.S.C. §  
6 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a de  
7 novo review of this case. Having carefully reviewed the entire  
8 file, the Court finds the Findings and Recommendations to be  
9 supported by the record and by proper analysis.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The Findings and Recommendations, filed August 17,  
12 2006, is ADOPTED IN FULL;

13 2. Plaintiff's section 1983 claims are DISMISSED, with  
14 prejudice, for plaintiff's failure to state a claim upon which  
15 relief may be granted;

16 3. Plaintiff's state law claims are DISMISSED without  
17 prejudice to filing in state court; and,

18 4. This dismissal shall count as a strike under 28 U.S.C.  
19 § 1915(g).

20  
21 IT IS SO ORDERED.

22 Dated: May 10, 2007

23 /s/ Anthony W. Ishii  
24 UNITED STATES DISTRICT JUDGE  
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